Supreme Court, U.S.
FILED
OCT 2 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-374

In re:

LAWRENCE N. JOLLY, DEBTOR
C. KENNETH STILL, CHAPTER XIII, TRUSTEE, Petitioner,

v.

CHATTANOOGA MEMORIAL PARK, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit

PATY, LAWRENCE, RYMER & ULIN
By: PHILLIP C. LAWRENCE
17 Patten Parkway
Chattanooga, Tennessee 37402
(615) 756-6770
Attorneys for Respondent

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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Respondent submits that the decision of the Court of Appeals does not raise any substantial question of Federal law nor does the decision conflict with applicable decisions of the Supreme Court or other Courts of Appeal.

As indicated in its decision, the Court of Appeals considered the definition of executory contract in accordance with the rulings of this Court and considered the objectives of the Bankruptcy Act and correctly determined with regard to the debtor's obligation to Chattanooga Memorial Park that:

> If it has been breached, and judgment obtained the precise goal of the rejection provisions has already been accomplished. The claim has been reduced to money damages which can be included in the wage earner plan and discharged along with the rest of the debtor's obligations. It is no longer an open question whether there might be more equitable, less burdensome means of discharging the debtor on this contract. That has been determined by the State Court and cannot be challenged here. (Appendix—24)

The decisions cited by petitioner are either factually dissimilar and inapplicable, or in harmony with the Court of Appeals decision. None of the cases mentioned dealt with an obligation reduced to judgment. The Court of Appeals correctly found that there was no executory obligation on the part of the debtor to be rejected by the trustee. "His duty was in the past, he has breached that duty, and had judgment entered against him for that breach." (Appendix—22) There is no substantial question for this Court's consideration.

CONCLUSION

For the above-stated reasons, respondent respectfully submits that the petition for writ of certiorari should be denied.

PATY, LAWRENCE, RYMER & ULIN

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